IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.3 OF 1999

The Institute of Chartered Accountants of India, a Statutory Body, incorporated under the provisions of the Chartered Accountants Act, 1949 and having its office at Indraprastha Marg, New Delhi - 110 002 .. Petitioner.

V/s.

Shri D.P. Acharya, of Mumbai Indian Inhabitant, stated to be Chartered Accountant and residint at A-4, "Nandan" 224, Veer Sawarkar Marg, Mahim, Mumbai - 400 016 .. Respondent.

Dr.Virendra Tulzapurkar, Senior counsel with Ms.S. Srikrishna i/b. Kanga & Co. for the petitioner.
Respondent present in person.
Mr.S.K. Pakale for Union of India.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 11TH AUGUST, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

. Shri D.P. Acharya, Chartered Accountant (hereinafter referred to as 'the respondent') faced disciplinary enquiry on the complaint of the Joint Director of Industries, Aurangabad (hereinafter referred to as 'the complainant'). In the complaint,

it was alleged that the respondent had issued certificate for consumption of raw material and production for the year 1986-87 in respect of M/s.Ajay Metal, Plot No.B-9, MIDC, Latur but it was found that the said unit had not maintained any record and inspite of this the respondent had issued certificate for huge amount of consumption of raw material and wrong certificate was issued by the respondent. The complaint was forwarded to the respondent. The respondent filed his written statement to which rejoinder was filed by the complainant. The Council formed prima facie opinion that the respondent was guilty of professional and/or other misconduct and referred the case to the Disciplinary Committee. Before the Disciplinary Committee, the parties produced documents. The complainant as well as the respondent was examined by the Disciplinary Committee. The Disciplinary Committee also examined Mr.A.R. Chandurikar, General Manager of District Industries Centre, Latur as a witness. The Disciplinary Committee thereafter heard the parties and was of the opinion that the respondent was guilty of misconduct and accordingly, forwarded its report to the Council. The Council concurred with the finding of the Disciplinary Committee that the respondent was guilty of

professional misconduct within the meaning of Section 21 read with Section 22 of the Chartered Accountants Act, 1949 and Clauses (7) and (8) of Part I of the Second Schedule of the said Act. The Council recommended to this Court that the name of the respondent be removed from the register of the members for a period of three months.

2. The only charge against the respondent was that he issued wrong certificate for consumption of raw material and production for the year 1986-87 in respect of M/s.Ajay Metal, Plot No.B-9, MIDC, Latur. The basis for this charge was that when called upon, M/s.Ajay Metal did not produce any record in the Office of the Director of Industries.

3. Having considered the entire material placed before us, we find that the finding of the Disciplinary Committee holding the charge against the respondent proved and the acceptance of the said finding by the Council, cannot be sustained.

4. In his examination before the Disciplinary Committee, the complainant admitted that basically there was no objection in the Chartered Accountant's certificate and prima facie the certificate issued by

the respondent did not seem to be wrong. If there was no objection to the certificate issued by the respondent and the certificate issued by the Chartered Accountant did not seem to be wrong to the complainant, merely because after issuance of the licence to M/s.Ajay Metal, the said party could not produce the records before the complainant, no conclusion can be reached that the respondent issued false certificate. The respondent has in unequivocal statement before the Disciplinary Committee stated that before issuance of the certificate, he examined purchase bills, purchase register and consumption report brought by the Accountant of the said firm. If subsequently the firm did not produce the said record before the complainant, we are afraid no inference can be drawn that no such record was ever produced before the respondent for issuance of the certificate. The respondent made it clear that for the purpose of certification of consumption, examination of purchase bills, purchase register and consumption records was sufficient and the said record was examined by him. Nothing has been brought on record by the complainant that the respondent was required to ask for record in addition to the purchase bills, purchase register and consumption record for the purpose of certification of

consumption.

5. We may beneficially refer to the question put by the President of the Disciplinary Committee to the complainant which reads thus :

> "You said that the Respondent has given a correct certificate prima facie. Just because after 3 years, when you visited the unit and the record was not produced, you cannot come to the conclusion that CA has issued a wrong certificate without verifying the records."

. The answer of the complainant to the aforesaid question reads thus :

> "This is only evidence I have."

. We are afraid on the basis of the complainant's own statement, the charge against the respondent is not at all proved.

6. Moreover, it may be noticed that the certificate of consumption given by the respondent has been attested by the General Manager, District Industries Centre, Latur. The complainant also admitted before the Disciplinary Committee that the Industries Department certified capacity and existence of the unit.

7. All in all the statement of the complainant himself before the Disciplinary Committee does not prove the charge against the respondent that he issued false consumption certificate to M/s.Ajay Metal.

8. The charge having not been proved, the complaint is liable to be dismissed. Order accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)